Equitable Conversion and Options for the Purchase of Land.— Where two parties enter into a specifically enforceable contract for the sale of land, an equitable conversion is said to be worked. That is to say, prior to performance the land will be treated for purposes of devolution and the like as personal property, and the vendee's rights under the contract, as real estate. It is, however, submitted that while the term "equitable conversion" summarizes aptly the results reached in dealing with the respective interests of the parties, it plays no part in working them out. Once the agreement becomes binding, equity regards the vendor as holding in trust for the vendee, and the vendee as under an equitable as well as a legal obligation to pay the purchase money.[1] This conception is founded on the principle that equity regards as done what ought to be done,[2] and so unflinchingly is it applied that in almost every respect the vendee is treated as though the contract were already performed. He is in equity the owner of the land, seized of an equitable estate.[3] Accordingly the vendee's interest can be assigned or devised,[4] and he must bear all losses and may take all benefits accruing after the contract has been made,[5] while the vendor's widow can claim no dower in land contracted before the marriage to be sold,[6] nor is the property any longer liable for his debts.[7] The vendor's right in equity is now to money and the vendee's to land; and the latter's right is properly regarded as an estate.[8] From this it would naturally follow that, while of course the vendor's right to purchase money would devolve upon his personal representative, the vendee's right under the contract, being an equitable estate in land, would in equity devolve upon his heir. Thus the fact that upon the vendee's death his heir or devisee gains the right to receive the conveyance,[9] while the vendor's personal representative becomes his successor,[10] is explained without recourse to the notion that equity treats real estate as personalty and *vice versa*.

Meanwhile, however, the legal titles, unaffected by the executory contract, devolve irrespective thereof, the heir of the vendor taking the land, to which the vendee is equitably entitled, and the personal estate of the vendee, together with the obligation to pay purchase money, going to his representative. Accordingly the vendor's heir is under a duty to convey to the vendee or his heir the land, and the vendee's representative to pay the purchase money to the vendor or his repre-

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[1] 3 Pomeroy, Eq. Jur., (3d ed.) § 161; Atcherley *v.* Vernon (1724) 10 Mod. 518; Masterton *v.* Pollen (1878) 62 Ala. 145; Brewer *v.* Herbert (1868) 30 Md. 301.

[2] 3 Pomeroy, Eq. Jur., (3d ed.) § 1159; Brewer *v.* Herbert *supra.*

[3] Brewer *v.* Herbert *supra;* Robb *v.* Mann (1849) 11 Pa. 300.

[4] Townsend *v.* Champernowne (1821) 9 Price 130; Buck *v.* Buck (N. Y. 1844) 11 Paige 170.

[5] Paine *v.* Meller (1801) 6 Ves. Jr. 349; Robb *v.* Mann *supra;* Brewer *v.* Herbert *supra.*

[6] Oldham *v.* Sale (Ky. 1840) 1 B. Mon. 76.

[7] Moyer *v.* Hinman (1855) 13 N. Y. 180.

[8] 1 Pomeroy, Eq. Jur., (3d ed.) § 105.

[9] Milner *v.* Mills (1729) Moseley 123; Atcherley *v.* Vernon *supra;* Langford *v.* Pitt (1731) 2 P. Wms. 629.

[10] Bubb's Case (1678) Freem. Ch. 38; Mayer *v.* Gowland (1779) 2 Dick. 536; 1 Pomeroy, Eq. Jur., (3d ed.) § 368.

sentative, not because of any conversion, but because each has inherited at law that which in equity is due to the other. To put it the other way around, the vendor's right to the purchase money has passed to his representative, and the vendee's heir has inherited his ancestor's equitable estate in the land. From this seems deducible the general principle that whatever rights have been acquired under a specifically enforceable contract will descend in equity according as they partake of the character of realty or of personalty, and will be enforceable by the party on whom they devolve against the holder of the corresponding legal titles.

If this be sound, it supplies the solution to a question raised by the opinion in the case of *The Rockland-Rockport Lime Co.* v. *Leary* (N. Y. C't of Appeals, Dec. 12, 1911), not yet reported. The court below had decided that a lessee who had an option to purchase the fee properly notified the personal representative of the deceased lessor, rather than his heir, of his determination to exercise it, on the ground that the exercise of such option converted the property into personalty from the date of the lease. The Court of Appeals expressly overruled this holding, though it decided in favor of the lessee on another ground; and in so doing it took occasion to repudiate those cases representing the weight of authority which hold that in such circumstances the lessor's representative is entitled to receive the purchase money, and approved those holding that it goes to the heir. The former group of cases,[11] though criticised [12] and in at least one jurisdiction repudiated,[13] is, it is submitted, correct. Upon giving the option the lessor indeed retained the legal and equitable estate subject to the term. But the option being specifically enforceable,[14] he held the equitable estate subject to be divested upon the happening of a contingency: namely, upon the lessee's exercising his option. Furthermore, there arose in the lessor a right to receive purchase money upon the happening of the same contingency. This right, created under a contract made by the lessor and hence part of his personal assets, should devolve upon his representative under the principles above pointed out.

PRIORITY OF EQUITIES AND THE PURCHASE OF EQUITABLE INTERESTS.— It is elementary that if a trustee fraudulently sell to one with notice of the trust, this vendee is defenceless against the *cestui*,[1] for he has no equity in his behalf and the jurisdiction of good conscience is indifferent to his legal title.[2] His position, however, would be impreg-

[11]Lawes *v.* Bennett (1785) 1 Cox Eq. 167; Townley *v.* Bedwell (1808) 14 Ves. Jr. 591; Collingwood *v.* Row (1857) 26 L. J. Ch. 649; Goold *v.* Teague (1858) 5 Jur. [N. S.] 116; Weeding *v.* Weeding (1861) 1 Johns. & H. 424; Kerr *v.* Day (1850) 14 Pa. 112.

[12]Collingwood *v.* Row *supra;* see Edwards *v.* West (1878) L. R. 7 Ch. D. 858.

[13]Smith *v.* Loewenstein (1893) 50 Oh. St. 346.

[14]Black *v.* Maddox (1898) 104 Ga. 157; McCormick *v.* Stephany (1898) 57 N. J. Eq. 257.

[1]Adair *v.* Shaw (1803) 1 Sch. & Lef. 243, 261; Smith *v.* Ayer (1879) 101 U. S. 320, 327.

[2]2 Pomeroy, Eq. Jur., § 739.